HON'BLE SHRI JUSTICE G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G. BHAVANI PRASAD

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W.A. Nos.8 and 68 of 2006

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W.A. No.8 of 2006:

Between:

The Government of Andhra Pradesh,

Rep. by its Principal Secretary,

Panchayat Raj Department,

Secretariat, Hyderabad and another … Appellants

And

A. Baswa Reddy and another … Respondents

W.A. No.68 of 2006:

Between:

A. Baswa Reddy … Appellant

And

The Government of Andhra Pradesh

Rep. by its Principal Secretary,

Panchayat Raj Department,

Secretariat, Hyderabad and two others … Respondents

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::COMMON JUDGMENT::

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Counsel for appellants

in W.A. No.68 of 2006 and

respondent Nos.1 and 2

in W.A. No.8 of 2006 : Advocate General

Counsel for respondent No.1

in W.A. No.8 of 2006 and

appellant in W.A. No.68 of 2006 : Sri K. Pratap Reddy,
Senior Counsel

Counsel for respondent No.2

in W.A. No.8 of 2006 and

respondent No.3 in

W.A. No.68 of 2006 : None

Dated: -4-2006

Per G. Bhavani Prasad, J

These appeals are directed against order dated 29-12-2005 passed by the learned Single Judge in Writ Petition No.19674 of 2005 whereby he quashed

G.O.Ms.No.315, Panchayat Raj and Rural Development (Mandal.II-A) Department, dated 3-9-2005 issued by the State Government removing writ petitioner from the post of Chairman of Zilla Parishad, Warangal and directed reconsideration of the matter.

While the State Government has challenged the quashing of removal of the writ petitioner, the latter has questioned the liberty given by the learned Single Judge to the State Government to consider the matter afresh.

Factual background:

Sri A. Baswa Reddy was elected as Chairman, Zilla Parishad, Warangal in 2001. On receipt of complaint made by the Vice Chairman and other Zilla Parishad Territorial Constituency Members that the Chairman had committed irregularities in the conduct of affairs of Zilla Parishad and execution of various works, District Collector, Warangal, vide his letter Rc.No.CC/02/2005, dated 11-01-2005, referred the matter to the State Government for appropriate action. The State Government, in exercise of powers conferred under Sections 255 and 256 of the Act vide G.O. Rt. No.758, Panchayat Raj and Rural Development (Mdls-II-A) Department, dated 02-5-2005, appointed Additional Commissioner, Panchayat Raj and Rural Employment, Hyderabad as enquiry officer. The charges levelled against the writ petitioner were as follows:

1. Sampoorna Grameen Rozgar Yojana (for short "SGRY") Funds:

The guidelines of SGRY stipulate preparation of an action plan for the works to be taken up with Zilla Parishad allocation well in advance before the commencement of the financial year with the approval of the Standing Committee and the General Body for 125% of allocations so as to be grounded with due administrative sanction soon after release of funds in April. However, the works were sanctioned in a piecemeal manner without any specific pattern in respect of Zilla Parishad, Warangal for the earlier three years without any consolidated action plan and they were subsequently placed before the Standing Committees and General Body, indicating the sanctions in violation of

prescribed norms and guidelines keeping in view certain individuals and areas. As per SGRY norms, 10% of the allocations has to be placed at the disposal of the Divisional Forest Officer, Social Forestry for social forestry activity, but in 2004-2005 about Rs.10,00,000/- were sanctioned for beautification of Zilla Parishad compound with social forestry allocation, which works were executed by the Panchayat Raj engineering officials.

2. Works with SFC grants:

SFC guidelines also prescribe preparation and approval by the Zilla Parishad in advance an annual action plan for 125% allocation, but in respect of Zilla Parishad, Warangal during the earlier three years, the works were managed to dovetail rice from SGRY (SC) scheme to circumvent the tender procedure on the pretext of enhancing the grant volume and the piecemeal sanctions given were without prior approval of the concerned committees of the Zilla Parishad.

3. Rural Road Maintenance and Special Rural Road Maintenance works (for short "RRM works"):

Similarly, annual action plan for execution of RRM works should be approved by the Zilla Parishad, but files generated from the office of the Executive Engineer were directly circulated to the Chairman, Zilla Parishad, Warangal and the signature of the Chief Executive Officer was formally obtained without any record in the Zilla Parishad office concerning these works.

4. Zilla Parishad General Funds:

Works proposed to be taken up from the Zilla Parishad General Funds shall be taken up only from the lists approved by the concerned Standing Committee

and General Body duly following the sectoral norms. Zilla Parishad, Warangal took up works from Zilla Parishad General Funds sanctioned by the Chairman in a piecemeal manner without considering the need and the balance, in violation of the norms. In 2003-2004, fifty (50) community halls, worth about Rs.75,00,000/- were sanctioned in Sangem Mandal, from which the Chairman, Zilla Parishad hails, to the exclusion of needy mandals in the backward areas of the district, indicating glaring misuse of official power and favouritism.

5. Collecting 5% advance for release of payments to contractors:

Discreet enquiry by the enquiry officer with the Vice Chairman and other sources revealed that the Chairman, Zilla Parishad is demanding 5% for passing the bills and making payments.

6. Procurement procedures for carrying out repairs and purchase of stores:

No repairs were carried out for Zilla Parishad guest house since three years as per the report of the Chief Executive Officer of the Zilla Parishad.

7. Procurement procedures for dealing of RWS bore wells, purchase of motors, etc.:

The report of the Executive Engineer reveals that drilling of bore wells was entrusted to the firms registered with the Ground Water department and motors were procured duly calling for tenders. The technical matter may be further verified by the engineering department.

8. 10% commission for release of RWS funds:

Discreet enquiries by the Additional Commissioner with the Vice Chairman and others revealed that the Chairman, Zilla Parishad is demanding 10%

commission for release of RWS grants.

9. Sanction and utilization of individual beneficiary schemes under SGRY in 2003-2004:

The Chief Executive Officer is engaged in conducting a discreet and separate enquiry regarding sanction and utilization of 22.5% S.C./S.T. component for 2003-2004 in SGRY individual beneficiary schemes.

10. Deployment, transfers and promotions of officers and staff in three years:

Most of the transfers out of 183 transfers of employees effected in the earlier three years were in violation of G.O. Ms. No.767, dated 21-8-2002 and G.O. Ms. No.16, dated 25-01-2005 and the Chief Executive Officer issued the orders at the behest of the Chairman, Zilla Parishad, Warangal. Five illustrative cases were specified to conclude misuse of the official position by the Chairman, Zilla Parishad, Warangal.

The enquiry officer submitted report with the finding that the writ petitioner had misused his power as Chairman of Zilla Parishad, flouted the government orders and failed to discharge his duties as per norms and procedure. He also recommended that the Chief Executive Officer be shifted because he had failed to prevent violation of the rules and procedures.

The State Government accepted the report of the enquiry officer and issued show cause notice dated 10-6-2005 to the writ petitioner requiring him to submit representation against his proposed removal from the office. The writ petitioner submitted reply dated 17-6-2005, the relevant extracts of which are re-produced below:

1. SGRY guidelines have to be implemented by the Chief Executive Authority and the allegation regarding social forestry allocation was answered by the Chief Executive Officer in his proceedings No.N2/1846/03, dated 08-02-2005, in which the Chairperson did not come into picture in any manner.

2. SFC guidelines are exclusively the responsibility of the Panchayat Raj Engineering department and irrelevant to the Chairperson.

3. RRM works are taken up on the representations of the public representatives with proposals from the Executive Engineer and Chief Executive Officer. After his approval, the Chairman's approval is obtained and then the approval of the Standing Committees/General Body before issue of administrative sanction. The Chairperson has nothing to do with their implementation.

4. The works were proposed by the Chief Executive Officer and approved by the Collector and Standing Committees 1 and 7 and General Body to be implemented as and when funds are available. Any violation is the responsibility of the Chief Executive Officer. Only 34 community halls and other buildings sanctioned by the Collector as proposed by the Zilla Parishad were tied with rice programme at a total cost of Rs.51,42,500/- consisting of Rs.30,25,000/- cash and Rs.21,17,500/- rice component. Merely because the Chairman, Zilla Parishad belongs to Sangem mandal, it cannot be neglected or the works being carried out cannot be called misuse of power or misconduct.

5. & 8. No work can be sanctioned by the Chairperson directly and it is not stated from whom demand for 5% was made and in respect of which work, which bill and which payment. The sweeping and wild statement without any details arbitrarily denies any opportunity to offer his explanation and such an allegation cannot be countenanced.

6, 7 & 9. The enquiry report itself declared them to be non-existing.

10.The deployment, promotions and transfers are at the instance, proposal and recommendation of the departments concerned and ultimately by the Chief Executive Officer. Any

violation of G.O. Ms. No.767, dated 21-8-2002 and G.O. Ms. No.16, dated 25-01-1005 is the sole responsibility of the Chief Executive Officer and unless disciplinary action is taken against the Chief Executive Officer for violation of the directions in the Government orders, the action proposed against the Chairperson under Section 249 of the Act will be illegal and without jurisdiction. Reference to individual cases is otiose and redundant. The alleged violation of Government rules by the Chairperson is a statement without any application of mind or reference to the provisions of law.

The writ petitioner also claimed that each of 31 works to be taken up under Zilla Parishad funds during 2005-06 was proposed by the Chief Executive Officer and the Chairman and ultimately by the Collector and was sanctioned by Standing Committee No.7 or Standing Committee No.1. Some of the works were sanctioned by the Zilla Parishad. Still further, he averred that no work had been implemented or undertaken so far. He denied the allegation that minutes were not properly recorded. He also questioned the very show cause notice and the enquiry by asserting that the same were vitiated due to violation of the rules of natural justice inasmuch as he has not been supplied the adverse material and was not given opportunity to controvert the same.

After considering the reply of the writ petitioner, the State Government gave him opportunity of personal hearing and then issued the impugned orders in G.O. Ms. No.315, Panchayat Raj and Rural Development (Mandal.II-A) Department, dated 03-9-2005 removing him from the post of Chairman. The relevant extracts of G.O.Ms.No.315 are re-produced below:

1. SGRY guidelines were issued by the Government of India and the Chairman cannot fail to comply with the guidelines on the plea that they are not Government orders.

2. The Chairman endorsed on almost all the transfer applications as “put up”, “consider”, etc., and passed orders against the office note that “there is ban on transfers”. The Chief Executive Officer alone cannot issue the orders unless there is specific order and pressure from the Chairman. Five specific instances of glaring examples of violation of the orders of ban on transfers were referred to.

3. Sanction for beautification of Zilla Parishad premises and construction of watchman quarter at a cost of Rs.10,00,000/- from SGRY Social Forestry funds, was contrary to SGRY guidelines.

4. The Chairman is well aware about the need for invariably following the rules and guidelines of any Government scheme as seen from reference to the guidelines of SFC and he is conveniently silent about non-preparation of annual action plan and dovetailing of SGRY (SC) scheme rice for circumventing the tender procedure.

5. Piecemeal sanction on piecemeal proposals under RRM scheme without preparation and approval of an action plan is damaging the true spirit of the representative democracy and local self-governance.

6. The type of issue like demanding of 5% gratis may not have any documentary evidence and witnesses and a departmental enquiry may not necessarily be in the mode of investigation.

7. Direct application of Section 249 (1) without applying Section 249 (6) is in the discretion of the Government considering the gravity of issue

and in public interest. An opportunity of representing and hearing was given and passing any order under Section 249 (6) does not arise when final orders are being passed on completion of enquiry.

8. Without an annual statement of probable receipts and expenditure for the next financial year as per Section 199 of the Act, the Chairman pressurized and made the Chief Executive Officer to propose 31 works with the General Funds for 2005-2006 and the Chairman cannot deny his role.

9. As on 24-5-2005 the minutes of the Standing Committees and General Body specified were not recorded and the minutes books were up-dated as on 03-6-2005 as an after thought as testified by the Superintendent and Assistant Incharge of the meetings.

10. The Chairman is educated and experienced people's representative with four years of experience as Chairman, Zilla Parishad, but is trying to throw the entire responsibility of his misdeeds on the administrative machinery. However, departmental disciplinary action was initiated against the Chief Executive Officer also for his default and guilt under the rules by placing him under suspension pending disciplinary action.

11. In anticipation sanction of works piecemeal and the imbalance in sanction of such works including sanction of large number of works to his native Sangem Mandal, disclose his misuse of power with mala fide intention. The transfers of 183 staff members in violation of ban orders speak about persistent violation of the Government instructions. The Chairman acted in an unbecoming way tarnishing the image of the Zilla Parishad and his own office. As it is clearly established from a careful consideration and perusal of the enquiry report and the Chairman's explanation that there is misuse and

abuse of power arbitrarily by the Chairman in violation of the directions of Government in sanctioning works and effecting transfers, the State Government opined that the Chairman deserves to be removed from the post and accordingly ordered his removal."

Before proceeding further, we consider it proper to mention that, vide G.O.Rt.No.1150 dated 18-6-2005, the State Government suspended the Chief Executive Officer of the Zilla Parishad and initiated disciplinary proceedings against him. The officer concerned challenged the same in O.A.No.3889 of 2005 filed before Andhra Pradesh Administrative Tribunal. By an order dated 5-8-2005, the Tribunal stayed the suspension of the Chief Executive Officer.

Shri A. Baswa Reddy challenged his removal by filing writ petition under Article 226 of the Constitution of India. He pleaded that in his capacity as Chairman, he had been discharging his duties in accordance with law and in the best interest of public. He alleged that after the defeat of Telugu Desam party in the general elections in May, 2004 and his own defeat as Telugu Desam candidate from Jangaon Assembly Constituency, the winning candidate Shri Ponnala Lakshmaiah, who became Minister, started campaign to dislodge him. As a part of this campaign, no confidence motion was moved on 24.05.2004 i.e. within ten days of the change of Government in the State, but the same was defeated. Thereafter, proceedings for his removal were initiated, which culminated in the issue of G.O.Ms.No.315. He further pleaded that the allegations levelled against him were baseless and the action taken by the State Government to remove him from the post of Chairman on the basis of wholly arbitrary and unjust findings recorded by the Enquiry Officer, is liable to be set aside on the ground of violation of rules of natural justice and mala fides. In the affidavit filed by him, Shri A Baswa Reddy averred that none of the ten charges levelled against him pertain to the performance of his function as Chairman in individual capacity and, as a matter of fact, all the actions were taken by him at the instance of Chief Executive Authority. He further averred that the order passed by the State Government does not reflect objective consideration of the reply filed by him to the show cause notice. He made allegations of mala fides against the State Government by asserting that the

impugned decision was taken in the wake of announcement of municipal elections. In the counter-affidavit filed on behalf of the State Government, it was not denied that the no confidence motion moved against the writ petitioner had failed, but it was averred that action had been taken against the writ petitioner in accordance with the provisions of the Act and the Rules framed there under. It was averred that being elected as head of the Zilla Parishad, the Chairman was under an obligation to ensure implementation of the directions given by the State Government, but the writ petitioner had acted in utter disregard of those directions. At this stage, it is appropriate to mention that the writ petitioner filed W.P.M.P.No.25012 of 2005 for staying the operation of G.O.Ms.No.315. The learned Single Judge noted that it is not a case where there was violation of principles of natural justice in passing the impugned order and that the first part of Section 248(2) of the Act reads that the Chairperson shall ensure that the Chief Executive Authority implements the directions issued by the Government and also shall not do anything in derogation to the directions of the Government and the second part reads that if the Chairperson contravenes the provisions of the Section, he shall be deemed to have wilfully omitted or refused to carry out the orders of the Government. The learned Single Judge opined that the issues are to be decided after filing of counters and final hearing and that prima facie the misconduct alleged against the petitioner materially may not be sufficient at that stage, but there are several other irregularities, whereunder the petitioner was alleged to have contravened the Government orders. The learned Single Judge was of the opinion at that stage that the order of removing the petitioner is completely in accordance with Section 248 (2) of the Act and refused to grant any stay.

The writ petitioner approached the Supreme Court in S.L.P. (Civil) No.19856 of 2005, which was dismissed on 03.10.2005 with an observation that the High Court should decide the main petition expeditiously. Thereafter, the writ petitioner filed a tabular statement with details of 31 works sanctioned under Zilla Parishad General Funds for 2005-2006 to show that all the works were approved by the concerned Standing Committee or General Body. However, as can be seen from the statement itself that all the approvals were *ex post facto* subsequent to the dates of sanction. The writ petitioner also filed before the Court a list of 19 employees whose transfers were effected within the exceptions permitted by the Government orders.

The learned Single Judge referred to the principles of judicial review and held that even if the O.A. filed by the Chief Executive Officer is allowed by the Tribunal, the petitioner cannot be absolved of the allegations levelled against him. Noting that the principal allegations against the petitioner are, expenditure under SGRY scheme without any action plan and effecting transfers in spite of ban orders, the learned Single Judge felt that had the petitioner referred to the resolutions of ratification of the administrative sanctions by the respective Standing Committees, the Government would have taken them into consideration and the outcome would not have been in a way which resulted in passing the order impugned in the writ petition. The learned Single Judge also observed that had the petitioner mentioned the grounds on which transfers have been effected in his explanation, as he placed the grounds for transfer of some employees before the Court, the Government would have definitely considered those grounds, while passing the order of removal. On that premise, the learned Single Judge allowed the writ petition and quashed the order of removal. Similarly, he directed the State Government to reconsider the matter keeping in view all the resolutions passed by various Standing Committees of Zilla Parishad, Warangal and various note files relating to the transfer orders, and pass appropriate orders within four weeks. Liberty was given to the petitioner to furnish any additional material in support of his explanation.

In Writ Appeal No.8 of 2006, it has been pleaded on behalf of the State Government that the writ petitioner was found guilty of grave irregularities in the execution of works and of effecting transfer in utter disregard of the policy framed by the Government and, therefore, the action taken for his removal did not suffer from any infirmity, warranting interference by the High Court under Article 226 of the Constitution of India.

The main thrust of the appeal filed by the writ petitioner is that no action could have been taken by the State Government against him, ignoring the fact that the entire responsibility for execution of works is squarely lie on the Chief Executive Officer.

Submissions:

Shri C.V. Mohan Reddy, learned Advocate General argued that the order passed by the State Government to remove the writ petitioner from the post of Chairman was consistent with Section 249(1) of the Act because the delinquent was found guilty of gross violation of the directions given by the State Government and also of not complying with the provisions of the Act. He emphasized that the pendency of action initiated against the Chief Executive Officer could not be made a ground to nullify the order of removal of the Chairman because, the latter was found guilty of grave mis-conduct. Learned Advocate General emphasized that even though the Chairman was not found guilty of financial irregularity, but the findings recorded by the Enquiry Officer that he had committed several irregularities in the execution of works and transferred large number of employees in complete disregard of the policy of the Government was sufficient to remove him from the post of the Chairman. Learned Advocate General relied on the judgment of the Supreme Court in **R.S. Saini v. State of Punjab** and submitted that the learned Single Judge could not have reviewed the order of punishment, without recording a finding that the decision of the State Government suffered from a jurisdictional infirmity or error of law apparent on the face of the record,.

Shri K. Pratap Reddy, learned senior Counsel for the writ petitioner strenuously contended that Sub-Section (1) of Section 248 speaks of directions to the Chief Executive Officer only and

Sub-Section (2) also applies to him only. As long as disciplinary proceedings are pending against the Chief executive Officer, no action under Section 249 (1) of the Act can be taken against the Chairman. He referred to Sections 186 and 193 of the Act dealing with the power of Chief Executive Officer and the administrative control of the Chairman, apart from Article 243-G of the Constitution and contended that if the Chief Executive Officer is exonerated, the Chairman of the Zilla Parishad cannot be responsible. Shri Reddy then submitted that none of the resolutions passed by the Zilla Parishad or its Standing Committees on any of the matters, which were subject matter of enquiry, had been cancelled by the State Government and/or other competent authority under Section 246 or 264 of the Act and, therefore, the writ petitioner could not be held guilty. Still further, Shri Reddy argued that the Chairperson has no legal obligation to comply with the directions of Government and, in any

case, the petitioner could not have been deprived of his elective office on the charge of effecting transfer in violation of the direction issued by the State Government. In support of his argument that the learned Single Judge rightly quashed the order of removal, Shri Pratap Reddy relied on the judgment of the Supreme Court in **Barium Chemicals Ltd. V. Company Law Board, S.R. Bommai v. Union of India,**

Findings:

We have carefully perused the record and gave our anxious consideration to the submissions of the learned counsel for the parties. We have also gone through the files produced by the learned Advocate General showing the progress of works of Zilla Parishad, Warangal and transfers effected at the instance of the writ petitioner.

Sections 248 and 249 of the Andhra Pradesh Panchayat Raj Act, 1994, which have bearing on the decision of this appeal, read as under:

> **"248. Power of Government to issue directions:--**
>
> (1) Notwithstanding anything contained in this Act, it shall be competent for the Commissioner or the Government to issue such directions as they may consider necessary to the Executive Authority, Mandal Parishad Development Officer or the Chief Executive Officer for the proper working of the Gram Panchayat, Mandal Parishad, or as the case may be, the Zilla Parishad or for the implementation of the resolutions thereof and the Executive Authority, Mandal Parishad Development Officer or as the case may be, the Chief Executive Officer shall implement those directions, failing which, he shall be liable for disciplinary action under the relevant rules.
>
> (2) The Sarpanch of the Gram Panchayat, the President of Mandal Parishad or as the case may be, the Chairman of the Zilla Parishad shall ensure that the Executive Officer, Mandal Parishad Development Officer or as the case may be, the Chief Executive Officer implements the directions issued by the Government under sub-section (1) and shall not do anything in derogation to the directions of the Government aforesaid. The Sarpanch, the President or the Chairman who contravenes the provisions of this section shall be deemed to have wilfully omitted or refused to carry out the orders of the Government for the proper working of

the Gram Panchayat, Mandal Parishad or as the case may be, the Zilla Parishad within the meaning of Section 249.

249. Powers of Government to remove Sarpanch, President or Chairman etc.:--

1. If in the opinion of the District Collector the Sarpanch or the Upa-Sarpanch and in the opinion of the Government the President or the Vice-President or as the case may be, the Chairman or the Vice-Chairman,--

   i. wilfully omitted or refused to carry out the orders of the Government for the proper working of the concerned local body; or

   ii. abused his position or the powers vested in him; or

   iii. is guilty of misconduct in the discharge of his duties; or

   iv. persistently defaulted in the performance of his functions and duties entrusted to him under the Act to the detriment of the functioning of the concerned local body or has become incapable of such performance:

   The Collector or as the case may be, the Government, may remove such Sarpanch or Upa-Sarpanch, President or Vice-President or as the case may be the Chairman or the Vice-Chairman, after giving him an opportunity for explanation.

   Provided that the proceedings initiated under this sub-section may be continued notwithstanding the fact that the Sarpanch or Upa-Sarpanch, President or Vice-President, or as the case may be, the Chairman or Vice-Chairman ceased to hold office by resignation or otherwise and shall be concluded within two years from the date of such cessation and where on such conclusion the authority competent to remove him, records a finding after giving an opportunity of making a representation to the person concerned that the charge or charges proved against him are sufficient for his removal, then the provision of sub-section (3) shall apply to the person against whom such finding is recorded.

2. Where the Sarpanch or Upa-Sarpanch, the President or Vice-President or the Chairman or Vice-Chairman is removed

under sub-section (1), the vacancy shall, subject to the provisions of sub-section (3) be filled as casual vacancies.

3. A Sarpanch or Upa-Sarpanch, a President or a Vice-President or Chairman or Vice-Chairman removed from his office under this section shall not be eligible for re-election as Sarpanch or Upa-Sarpanch, President or Vice President or Chairman or Vice-Chairman for a period of two years from the date of the removal.

4. If the District Collector is satisfied that any elected member of the Gram Panchayat or the Government are satisfied that any elected member of a Mandal Parishad or Zilla Parishad is guilty of any misconduct while acting or purporting to act in the discharge of his duties, or in the performance of the functions, under this Act, the District Collector or as the case may be, the Government may, by order, remove such member, after giving him an opportunity for explanation, and any member so removed shall not be eligible for re-election as a member for a period of two years from the date of removal.

5. Where a member of Gram Panchayat, Mandal Parishad or Zilla Parishad is removed under sub-section (4), the vacancy shall be filled in such manner within such time as may be prescribed.

6. If the District Collector is of the opinion that a Sarpanch or a Upa-Sarpanch or any member of a Gram Panchayat or the Government are of the opinion that any President or Vice-President or the Chairman or Vice-Chairman or any member of a Mandal Parishad or Zilla Parishad wilfully omitted or refused to carry out the orders of Government for the proper working of the concerned local body or abused his position or the powers vested in him, and that the further continuance of such person in office would be detrimental to the interests of the concerned local body or the inhabitants of the village, Mandal or District, the District Collector or as the case may be, Government may, by order, suspend such Sarpanch or Upa-Sarpanch or President or Vice-President or as the case may be, the Chairman or Vice-Chairman or member from office for a period not exceeding three months, pending investigation into the said charges and action thereon under the foregoing provisions of this section:

Provided that no order under this sub-section shall be

passed unless the person concerned has had an opportunity of making a representation against the action proposed:

Provided further that it shall be competent for the Government to extend, from time to time, the period of suspension for such further period not exceeding three months, so however that the total period of suspension shall not exceed six months:

Provided also that a person suspended under this sub-section shall not be entitled to exercise the powers and perform the functions attached to his office and shall not be entitled to attend the meetings of the concerned local body except a meeting held for the consideration of a no-confidence motion.

7. Any person aggrieved by an order of removal passed by the District Collector under sub-section (1) or sub-section (4) may, within thirty days from the date of the order prefer an appeal to the Government and the Government may, pending a decision on such appeal, stay the order appealed against."

An analysis of the above re-produced provisions makes it clear that under Section 248(1) of the Act, the Commissioner or the State Government can issue such directions to the Chief Executive Officer of the Zilla Parishad for proper working or for implementation of the resolutions thereof and the officer concerned is obliged to implement such directions. Any lapse on his part makes him liable for disciplinary action. Under sub-section (2), Chairman of the Zilla Parishad is not only duty-bound to ensure that the Chief Executive Officer implements the directions issued by the Government under sub-section (1), but he is ordained not to do anything in derogation to the directions of the Government. Second part of sub-section (2) of Section 248 provides for consequence of violation of the provisions of Section 248 by the Chairman. It declares that the Chairman, who contravenes the provisions of Section 248 of the Act, shall be deemed to have willfully omitted or refused to carry out the orders of the Government for proper working of the Zilla Parishad within the meaning of Section 249. Shri Pratap Reddy wants us to read Section 248(2) in a narrow sense so as to confine the obligation of Chairman of Zilla Parishad only to the extent of ensuring that the Chief Executive Officer implements the directions issued by the State Government under sub-section (1). According to

him, this section does not oblige the Chairman to himself implement the directions issued by the Government. In our opinion, there is no merit in this argument of the learned senior counsel. It is true that language of sub-section (1) of Section 248 and first part of sub-section (2) gives an impression that the duty to comply with the directions issued by the Government or the Commissioner is of Chief Executive Officer of the Zilla Parishad and the Chairman is only required to ensure faithful implementation of those directions, but the use of expression “shall not do anything in derogation to the directions of the Government” in sub-section (2) makes it clear that the Chairman of Zilla Parishad is not only duty-bound to ensure that the Chief Executive Officer acts in-consonance with the directions issued in sub-section (1) but he himself does not do anything in breach of those directions. This interpretation of first part of sub-section (2) fits in the second part thereof, which provides for consequence of contravention of provisions of Section 248 of the Act by the Chairman. When Section 248(2) of the Act further states that the Chairman, who contravenes the provisions of this section, shall be deemed to have wilfully omitted or refused to carry out the orders of the Government for the proper working of the Zilla Parishad within the meaning of Section 249, it obviously means that independent and irrespective of the liability of the Chief Executive Officer for disciplinary action for any violation of mandate of the section, the Chairman, who fails to ensure such compliance, shall be distinctly liable for the deemed omission or refusal to carry out the Government orders within the meaning of Section 249. The plain and unambiguous language of Section 248 leaves no scope for any other strained interpretation. Therefore, if the Chairman contravenes Section 248(2), then the case falls within the ambit of Section 249(1)(i) and he can be proceeded against for violation of Section 248(2) apart from other grounds like abuse of position and powers, misconduct in the discharge of duties and persistent default in performance of functions and duties to the detriment of the functioning of the local body. In terms of Section 249(1), the Government can remove the Chairman on any of the four alternative grounds specified in that section, provided that such an action is taken after giving the Chairman concerned reasonable opportunity of explanation. In view of the above discussion, we hold that the role and responsibility of the Chief Executive Officer and any action taken or not taken or pending or not pending against him is irrelevant for determining the justification for the removal of the

Chairman of the Zilla Parishad. Likewise, reference to various provisions contained in Part IX of the Constitution and XI Schedule thereto do not have any bearing on the interpretation of Sections 248 and 249 of the Act. Indeed, it was not even the case of the writ petitioner that these provisions violate any Article of part IX of the Constitution.

Coming to the alleged malice in law claimed to be evidenced by the unsuccessful no-confidence motion, the fact that 20 out of 25 members who moved such motion belonging to the party of the writ petitioner itself being not in dispute, the contention that such exercise of no-confidence was engineered to take advantage of the second Proviso to Section 245(1) of the Act, which prescribed that no notice of such motion shall be made against the same person more than once during his term of office, appears natural and the learned Single Judge rightly rejected the writ petitioner's plea on a close scrutiny. That apart, the allegations by the Vice-Chairman and some Zilla Parishad Territorial Constituency Members against the writ petitioner leading ultimately to his removal, may be part of a political campaign, but such legitimate political activity by competing rivals to out smart each other is permitted and not prohibited so long as it remains within the confines of provisions of law and principles of natural justice. If the allegations are well-founded, even if politically motivated, the legal consequences that flow out of proof of such allegations cannot be belittled on the pretext of such allegations coming from political rivals. Except that the State Government is run by the opposite political party, while the writ petitioner belongs to the party in opposition, none of the grounds on which the impugned action was taken can be said to be indicating any exercise of power for collateral and extraneous purposes, vitiating the action due to malice in law. No nexus between the writ petitioner's removal and municipal elections is indicated by the material on record and it cannot be a matter of inference.

Adverting to the distinct charges, it must be stated to the credit of the writ petitioner that there was no allegation of any financial irregularity or malfeasance and misfeasance by him and that the allegations of his demanding 5% or 10% advance or commission for release of funds or payments are totally unsubstantiated by any material on record. Equally unsubstantiated are the allegations about any deviation in procurement procedures in carrying out

works or purchasing stores.

However, even the writ petitioner did not contend that any annual or other action plan was prepared in advance for SGRY works or SGRY (SC) scheme or RRM and special RRM works. He also did not contend that there was any prior approval of the concerned Standing Committee or General Body of the Zilla Parishad for sanction or execution of the specified works. He also did not dispute sanction of Rs.10,00,000/- for beautification of Zilla Parishad compound and construction of watchman quarter under Social Forestry allocation of 10% and it is difficult to conceive how such sanctioned works can be considered a social forestry activity. The non-compliance with the relevant guidelines in this regard is not seriously disputed with the attempt being only to lay the fault at the door of the Chief Executive Officer. Similarly, it is not factually in dispute that 183 transfers of employees of Zilla Parishad were effected with the approval of the writ petitioner during the period of ban on such transfers under the relevant Government orders, out of which the writ petitioner attempted to provide justification for 19 transfers only as falling within the exempted categories. The verbal or written instructions of the Chairman leading to such transfers are not seriously denied nor is it controverted that almost in every file relating to such transfers, the ban on transfers imposed by the Government was specifically endorsed and brought to notice, though the defence is that the Chief Executive Officer and not the Chairman that can be held responsible. Specific instances of transfers in violation of the Government orders were placed on record.

Similarly, regarding the works with the general funds of the Zilla Parishad for 2005-2006, the sanction admittedly preceded the approval by the concerned Standing Committee or General Body, even without the formulation of any budget proposals for 2005-2006, leave alone passing of such budget by the Zilla Parishad and approval of the same by the Government. Even assuming that the non-recording of the minutes in the minutes books cannot be confirmed in the absence of any definite material that the minutes were subsequently made up after the visit of the enquiry officer and before 03-6-2005 and even assuming that the general observations in the enquiry report about the transgressions by the Chairman lack any specific and definite proof, the admitted deviations are there to see.

G.O. Ms.No.315, dated 03-9-2005 in question narrated the events leading to the order and the personal hearing granted to the writ petitioner after receiving his reply to the show cause notice. While Section 249 prescribes only an opportunity for explanation, a personal hearing was given to the writ petitioner in addition and these opportunities for explanation and personal hearing were not claimed to be illusory or unreal even by the writ petitioner. His claims of the Government's non-application of mind to the contentions in his defence do not appear to be justified from the contents of the order in question. Except the alleged demand of 5% gratis by the Chairman and non-recording of minutes stated in G.O. Ms. No.315, none of the other conclusions can be said to be without basis or material. Whether the material available with the Government proved the allegations beyond any reasonable doubt is another matter, but the adequacy or inadequacy of such material or evidence to uphold the charges may not be for the Court to determine. The Chairman cannot shirk his responsibility by contending that he alone could not have taken all the offending decisions and has to answer his share of responsibility to the extent of his actions. To the extent he contributed to the non-implementation in derogation to the Government directions by the Chief Executive Officer, he shall be deemed to have wilfully omitted or refused to carry out the orders of the Government within the meaning of Section 248 (2) read with Section 249 (1) (i) of the Act.

The limited scope of judicial review and the relevance of the decision making process rather than the merit of the decision itself were noted by the learned Single Judge, who stated that in judicial review the question is whether the impugned action is lawful or unlawful. However, he thought that if the resolutions ratifying the administrative sanctions for the offending works were placed by the writ petitioner on record, the result of consideration of his explanation would have been otherwise. However, the enquiry report coupled with the show cause notice clearly shows that the complaint was about not obtaining the approval of the concerned Standing Committee or the General Body before sanction as per the relevant guidelines and provisions and not that they were not obtained at all. Similarly, even till now the writ petitioner furnished his justification for effecting transfers in case of 19 employees out of

183 and how that limited information would have made any difference in the consideration by the Government as thought by the learned Single Judge, is difficult to comprehend. The Government relied on specific instances of gross violation in the impugned order and not on any of the 19 cases relied on by the writ petitioner. Even the learned Single Judge did not consider the order impugned to be vitiated on fact or in law on any ground and did not give any specific finding that the resolutions passed by various Standing Committees or the various note files relating to transfer orders were not considered by the Government, while passing the orders in question. Reconsideration of the matter keeping in view such resolutions and note files, was not thus ordered on the ground of any vitiating factors, but on the ground of writ petitioner not placing on record such material before the Government before the order. Even if the writ petitioner did not exercise due diligence in defending himself, the same cannot be an invalidating factor against the order of removal. He cannot take advantage of his own faults and defaults.

It was held in **R.S. Saini's case** (1 supra) that:

> "The Court while exercising writ jurisdiction will not reverse a finding of the enquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings."

Therefore, when the disciplinary authority based its conclusions on the material available on record after considering the defence put forth by the writ petitioner and when there is nothing on record to suggest any unreasonableness or subjectivity or perversity or non-application of mind, the order cannot be found fault with within the limited scope available under Article 226 of the Constitution, more so when there is undoubtedly, if not undisputedly, some evidence to reasonably support the conclusion. Adequacy or reliability of the evidence is not for the Court to review. The present case is not one where prima facie proof and existence of relevant fundamental circumstances is absent and the formation of opinion by the State Government can be

considered dishonest to apply such vitiating circumstances pointed out in **Barium Chemicals Limited's case** (2 supra) or **S.R. Bommai's case** (3 supra). None of the settled propositions relating to judicial review can be considered applicable to vitiate the impugned order.

The Supreme Court reiterated the scope of judicial review in two latest pronouncements. In **Government of A.P. v. Mohd. Nasrullah Khan** it held:

> "By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority."

In **Union of India and others v. Flight Cadet Ashish Rai**, the Supreme Court pointed out that:

> "There should be judicial restraint while making judicial review in administrative matters. Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision-making authority exceeded its powers; (c) committed an error of law; (d) committed breach of the rules of natural justice; and (e) reached a decision which no reasonable tribunal would have reached; or (f) abused its powers. Administrative action is subject to control by judicial review in the following manner:
>
> i. Illegality: this means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
>
> ii. Irrationality, namely, Wednesbury unreasonableness.
>
> iii. Procedural impropriety."

In the present case, neither illegality nor irrationality nor procedural impropriety nor violation of principles of natural justice resulting in manifest miscarriage of justice can be said to have been made out and none of the

recognized vitiating factors being established, remitting the matter back to the Government for considering material which the writ petitioner failed to place before the Government, is beyond the scope of the jurisdiction under Article 226 of the Constitution of India. The order of the learned Single Judge has, therefore, to be set aside and the writ should fail.

For the foregoing reasons, Writ Appeal No.8 of 2006 is allowed and Writ Appeal No.68 of 2006 is dismissed. The order of the learned Single Judge in Writ Petition No.19674 of 2005 dated 29-12-2005 is set aside. As a sequel, Writ Petition No.19674 of 2005 is dismissed. No costs.

G. BHAVANI PRASAD, J

Date: 25-4-2006

G.S. SINGHVI, CJ

Svv / svs/ksld